committed the offences of fraudulently removing property from the creditors of the Workers' Party, they falsely made the declaration purporting to claim that their accounts had truly and fairly reflected the transactions of the Workers' Party during the crucial accounting period in the full knowledge that they had suppressed all references to the receipts and subsequent disposal of the proceeds of the three cheques. Their mental malignity was further evidenced by the fact that both of them, holding responsible offices in a political party, were deliberately and wilfully thwarting a judgment creditor of their party. It was worse in the case of Jeyaretnam who, as an advocate and solictor, is also an officer of this court. Although Lord Hooson made a mitigation plea on their behalf before me, I must note that the appellants had failed to mitigate before the Senior District Judge. I have serious doubts if they are remorseful at all.

Having regard to all the circumstances of this case, I vary the sentences imposed by the Senior District Judge. I sentence each of them to an imprisonment for a term of one month and would also impose on each of them a fine of $10,000. In default, each will have to serve a further term of one month.

Sentence varied accordingly.

Solicitors: *M.P.D. Nair & Co.*

TAN SEOW PONG & ORS. v. PUBLIC PROSECUTOR

[A.Cr.J. (Chan Sek Keong J.C.) November 7, 1986]

[Singapore – Magistrate Appeal Nos. 75, 76 & 77 of 1986]

Road Traffic – Dangerous driving – Particulars in charge – Whether proved – Criminal Procedure Code (1980 Reprint), ss. 158(1), 161, illustration (d) to s. 161, & 395 – Road Traffic Act (Cap. 92, 1973 Reprint), s. 26(1).

Criminal Procedure – Road traffic – Dangerous driving – Particulars in charge – Whether proved – Road Traffic Act (Cap. 92, 1973 Reprint), s. 26(1) – Criminal Procedure Code (1980 Reprint), ss. 158(1), 161, illustration (d) to s. 161 & 395.

The first appellant was charged with three offences. The first was for an offence of dangerous driving under section 26(1) of the Road Traffic Act (Cap. 92, 1973 Reprint). The second charge was for displaying an identification mark of the wrong shape on his car, an offence under rule 11 of the Motor Vehicles (R & L) Rules 1972. The third charge was for driving his car with brakes that were not in good order, an offence under rule 88(1) of the Motor Vehicles (Construction & Use) Rules 1974. The second appellant was also charged with three offences. As in the case of the first appellant, the first charge was one of dangerous driving. The second charge was for driving the said car with an exhaust silencer baffle pipe which was not in good and efficient order, an offence under rule 90(1) of the 1974 Rules. The third charge was for driving a car with a bald tyre and thereby contravening rule 92(1) F of the 1974 Rules. The third appellant also faced three charges. The first two charges of the third appellant were the same as the first two charges of the first appellant. The third charge of the third appellant, however, was that he drove the said motorcar with a slack steering ball joint, an offence under rule 85(1) of the 1974 Rules.

At the close of the prosecution case, the first appellant was acquitted on the second charge and was called to enter his defence on the first and third charges. The second appellant was acquitted on the second and third charges and was called to enter his defence to the first charge. The third appellant was acquitted on the second and third charges and was called to enter his defence to the first charge.

The appellants were tried jointly and convicted at the end of the trial. They were fined $1,000 each and disqualified from holding or obtaining a Class 3 driving licence for one year from the date of conviction. They appealed against their convictions. They contended that there was no evidence to show that each of them had driven the car specified in the charge against them.

Held, dismissing the appeals: (1) as for the first appellant, since he had withdrawn his appeal against the third charge, he must be deemed to have admitted to the third charge. Therefore, as the third arose out of the same incident as the first charge, it followed that this appeal against his conviction in the first charge must fail;

(2) as for the second and third appellants, the prosecution has adduced *prima facie* evidence that each of them drove one of the cars. To acquit the second and third appellants on the ground put forward by their counsel would lead to the conclusion that, as far as the law is concerned, neither the appellant was driving either of the two cars. This is not only an absurdity in fact but also an absurdity in law;

(3) an error of the nature found in the present case comes within the purview of section 161 of the Criminal Procedure Code. However, neither appellant was misled by the error as both of them were aware that they had driven the cars as identified;

(4) section 395 of the Criminal Procedure Code applies in the present case. The failure to pinpoint the motor cars to the appellants was, at the highest, an irregularity which has not and could not have occasioned any failure of justice.

Cases referred to:

(1) *Beh Heng Seong* v. *Public Prosecutor* [1972] 2 M.L.J. 190.
(2) *Simpson* v. *Roberts* (*The Times*, December 21, 1984)
(3) *Scruby* v. *Beskeen* [1980] R.T.R. 420, 422.
(4) *Jones* v. *Metcalfe* [1967] 3 All E.R. 205, 208.

MAGISTRATE'S APPEALS.

Peter Fernando for the appellants.

Jennifer Marie (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Chan Sek Keong J.C.: These three appeals arose in the following circumstances:

(1) The first appellant was charged with three offences:

(i) that he drove motor car EE 4005A in a dangerous manner, an offence under section 26(1) of the Road Traffic Act (Reprint).

(ii) that he displayed an identification mark of the wrong shape on the said car, an offence under rule 11 of the Motor Vehicles (R&L) Rules 1972;

(iii) that he drove the said car with brakes which were not in good order, an offence under rule 88(1) of the Motor Vehicles (Construction & Use) Rules 1974.

At the close of the case for the prosecution, he was acquitted on the second charge and was called to enter his defence on the first and third charges.

(2) The second appellant was charged with three offences:

(i) that he drove motor car SE 8498T in a dangerous manner, an offence under section 26(1) of the Road Traffic Act;

(ii) that he drove the said car with an exhaust silencer baffle pipe which was not in good and efficient order, an offence under rule 90(2) of the 1974 Rules;

(iii) that he used the said car with a bald tyre and thereby contravened rule 92(1)(F) of the 1974 Rules.

At the close of the prosecution's case, he was acquitted on the second and third charges and was called to enter his defence to the first charge.

(3) The third appellant was charged with three offences:

(i) that he drove motor car EG 4031M in a dangerous manner, an offence under section 26(1) of the Road Traffic Act;

(ii) that he displayed an identification mark of the wrong shape on the said vehicle, an offence under rule 11 of the 1972 Rules;

(iii) that he drove the said motor car with a slack steering ball joint, an offence under rule 85(1) of the 1974 Rules.

At the close of the case for the prosecution, he was acquitted on the second and third charges and was called to enter his defence to the first charge.

The appellants were tried jointly. They remained silent when they were called upon to enter their defences to the charges described above. They were represented by counsel who did not make any submission. They were accordingly convicted on the charges to which they made no defence. They were fined $1,000 each and disqualified from holding or obtaining a Class 3 driving licence for one year from the date of conviction.

The appellants have now appealed against their convictions on the ground that there was no evidence to show that each of them had driven the car specified in the charge against him.

The evidence of the prosecution on each of the first charges against the appellants was based entirely on the testimony of PC8458 Lim Eng Kiat (PW2) who was the traffic police officer who single-handedly stopped and arrested the three appellants. His entire testimony is as follows:

"On 18.12.83 at about 3.20 am, I was on duty along ECP (East Coast Parkway). Whilst travelling along ECP, Benjamin Sheares Bridge, I saw three motor cars from the slip road from Beach Road side travelling towards airport. These three motor cars were travelling at a very fast speed. I immediately accelerated to get close to these three vehicles. I saw these three motor cars from the extreme left swerving straight to the extreme right cutting across two lanes without any form of signal causing a few vehicles which were on second and third lanes to brake to avoid collision with these vehicles. These three motor cars continued to speed and weave in and out of traffic thereby causing several vehicles to brake. I saw two motor cars were abreast and another one was behind which was occupying the extreme right lane. The two vehicles in front were trying to gain the lead. I checked the speed was at 155 kmph. Yes, it was exactly 155 kmph as my speedmeter was an electronic meter. I tried to overtake. Just before the junction of Fort Road, these three vehicles slowed down due to the red traffic light and several vehicles were stationary in front. I managed to overtake and signalled these three motor cars to pull to the roadside and recorded the particulars of the drivers. Yes, I recorded the registration numbers of the vehicles. The vehicles were EE 4005A, EG 4031M and SE 8498T. I also checked the vehicles and suspected these motor cars were illegally modified. I escorted them back to traffic police for general inspection.

When I stopped these three drivers I explained the offence to them. I told them that they will prosecuted in court for dangerous driving. The vehicles abreast were EE 4005A and EG 4031M where the former was on the third land and the latter was on the extreme right lane.

Volume of traffic at that time was moderate. Road surface was dry. No, there were no other vehicles which committed the same offence at that time. Yes, I used the official motor cycle TP65. PC1178 was supposed to be my partner. However, PC 1178 didn't see the incident. Yes, he came after I had stopped these three motor cars.

I trailed these three vehicles for about 1 km. I don't know for how long I trailed them. Yes, I can identify the drivers (identified as the three accused). They are Tan Seow Pong 1244842/B, Pong Mun Hin 1401744/E and Chau Tiong Chee 1348888/F."

That part of the magistrate's grounds of decision which relates to the first charge against each of the appellants is as follows:

"PW2 managed to overtake these three m/cars when they slowed down due to the red traffic light at the junction of Fort Road where several other vehicles were already in a stationary position. The particulars of the three drivers were recorded. They were the three accused. The registration numbers of their vehicles were also recorded. These were EE 4005A, EG 4031M and SE 8498T. These vehicles were then sent for general inspection. These facts were not challenged by the accused. Based on these facts, particularly the fact that the vehicles were trying to gain the lead, I found that they did race among themselves."

Mr. Fernando submitted on behalf of the appellants that since there was no evidence before the magistrate that each appellant did drive the motor vehicle specified in the charge against him, they should have been acquitted on the ground that an essential ingredient of the offence had not been proved. It was submitted that if Mr. A is charged with driving motor car AB 123C in a dangerous manner, the prosecution must prove that (1) there was a person called Mr. A (2) Mr. A drove motor car AB 123C and (3) he drove it in a dangerous manner. In the cases under appeal, it was argued that the essential ingredient that is (2) has not been proved in each case.

Counsel referred to section 158(1) of the Criminal Procedure Code in support of the argument. He submitted that the charges in question preferred against the appellants were in compliance with this provision which required the identity of the cars to be proved. Section 158(1) reads as follows:

"The charge shall contain such particulars as to the time and place of the alleged offence and the person, if any, against whom or the thing, if any, in respect of which it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged."

He also referred to the case of *Beh Heng Seong* v. *Public Prosecutor*[1] which, he submitted, lent support to his submissions. In that case, the accused was charged and convicted of manufacturing sour plum juice containing saccharin, an offence under the Sale of Food and Drug Regulations. The only evidence against him was the production in court of a bottle of the said juice offered for sale by the accused bearing a label with a portrait thereon and alleging that the manufacturer was one Beh Kwang Chee. No evidence was adduced to show whether Beh Kwang Chee was the name of a shop (*i.e.* name of a firm or sole proprietorship) or the name of a person or of its or his address. Also, no evidence was adduced to show that the accused was the sole proprietor of Beh Kwang Chee. He was convicted. The High Court allowed his appeal on the ground that no *prima facie* case had been made out against the accused. In my view, this case does not lend any support to the contention of counsel for the appellants.

For the Public Prosecutor, it was argued that the registration number of a motor car is not an essential ingredient to the offence of driving a motor vehicle in a manner which was dangerous to the public. So long as there is evidence that each of the appellants has driven a motor vehicle, that should be sufficient and the particulars of the charge relating to the registration number of the vehicle should be treated as mere surplusage. It was also contended that section 161 of the Criminal Procedure Code (Reprint) was applicable on the ground that if there was no proper identification of the specific car which was alleged to have been driven by each appellant, that would merely amount to an error in the statement of particulars required to be stated in the charge and that such error was not material because the appellant was in fact not misled by that error or omission. It was said that illustration (d) of that section was applicable to his case. Section 161 and the illustration are as follows:

"161. No error in stating either the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars shall be regarded at any stage of the case as material unless the accused was in fact misled by that error or omission...

Illustrations

(d) A is charged with the murder of John Smith on June 6, 1891. In fact the murdered person's name was James Smith and the date of the murder was June 5, 1891. A was never charged with any murder but one and had heard the inquiry before the magistrate which referred exclusively to the case of James Smith. The court may infer from these facts that A was not misled and that the error in the charge was immaterial."

Although the submission of counsel for the appellants is a clever attempt (which, it must be conceded, any accused is entitled to do) to take advantage of a simple oversight on the part of the Police Prosecutor, I have to deal with it on its merits.

Section 158(1) of the Criminal Procedure Code requires a charge to contain sufficient particulars to enable the accused to have notice of the matter with which he is charged. In a charge of driving a motor car in a dangerous manner, the identification of the motor car is such a particular. But a motor car can be identified in many ways, *e.g.* its registration number, its make, model or colour or even by its physical production in court. The registration number of a car happens to be the best and most convenient means of identifying a car, but not the only means. It follows that the registration number of a car when used as a means of identifying a car in a charge may be mere surplusage if that car can be identified by any other means. Having said that, I must also acknowledge that in these three cases, whether the cars were identified by their registration numbers (*i.e.* EE 4005A, SE 8498T and EG 4031M) or their model names (*i.e.* Mitsubishi Colt Galant, Ford and Mitsubishi Colt Galant respectively), there was still no evidence which linked the appellants to the cars they were charged with driving. Now, let me take a hypothetical case where XYZ is charged with driving a motor vehicle No. AB 123C in a dangerous manner and where at the trial XYZ is properly identified but the prosecution is unable to prove that the car alleged to have been driven by the accused is AB 123C. XYZ will be entitled to be acquitted on that ground alone. Why? Because it has not been proved that he has driven motor car AB 123C. But, failure to identify a car may be due to various reasons: (a) there is no such car AB 123C; (b) there is a car driven by the accused but its identity cannot be proved because the prosecution witness forgets the number or takes down the wrong registration number and there is no other means of identifying it, or (c) there is a car driven by the accused but its registration number is not ABC 123C but AB 456C. If the failure to identify the car is due to (a) or (b), there is no way of making good the charge against the accused. But if the failure to identify the car is due to (c), then it is a simple matter for the prosecution to apply to the court hearing the case to amend at the appropriate time the charge to driving AB 456C. As McCullough J. said in *Simpson* v. *Roberts*,[2] a charge which is good enough to enable an accused to identify the misdoing alleged can be amended so long as it continues to allege the same doing. Let me take a second hypothetical case where the facts are that the prosecution witness can identity XYZ and identify the car as No. AB 123C but *omits* to say in evidence that that car is driven by XYZ. In that situation, there is no question but that the court is entitled to infer that XYZ is the driver of motor car AB 123C at the time and place stated in the charge. In other words, there will be some evidence on which the court may properly convict the accused – see Roskill L.J. in *Scruby* v. *Beskeen*.[3]

Let me apply the above analyses of the two hypothetical cases to the facts in these appeals. It can be seen at once that if each of the appellants had been tried separately, and PW2 had said he took down the particulars of the appellant and also the registration number of the motor car, there would have been some evidence to infer that the appellant drove the car that was identified: *Scruby* v. *Beskeen*.[3] It is therefore clear that it is the joint trial of the appellants which has created the opportunity for the point to be raised by their counsel. Why should a joint trial in these circumstances afford a defence which would not have been available if each accused had been tried separately?

Before I answer this question, I should first like to dispose of the appeal of the first appellant, as his position, by an irony of fate, has been rendered dissimilar to that of the other two appellants. The first appellant was, in addition to his conviction for dangerous driving, also convicted on the third charge, *i.e.* driving motor car EE 4005A with defective brakes. He appealed against the conviction but withdrew the appeal when it came on for hearing before me. By so doing, he must be deemed to have admitted that he was driving the motor car EE 4005A at the time and place stated in the third charge against him. Since the third charge arose out of the same incident as the first charge, it follows that his appeal against his conviction on the first charge must fail.

The cases before me are different from those where the motor vehicles involved could not be identified at all. Here they were all properly identified. What is peculiar here is that there is no direct evidence to link each appellant to the driving of the car bearing the registration number as specified in the charge against him. But common sense dictates that each of the appellants identified by PW2 must have driven one of the three cars identified by PW2. Counsel for the appellants

submitted that common sense has no application to and does not relieve the prosecution of its obligation to prove all the essential ingredients of an offence. With that proposition, I wholeheartedly agree (see Diplock J. in *Jones* v. *Metcalfe*,[4] a case of a failure to identify the motor vehicle which caused the accident, where he said: "Like Lord Parker C.J., I have every sympathy with the magistrates because the inference of fact that the appellant was the driver of the lorry at the time of the accident is irresistible as a matter of common sense; but this is a branch of the law which has little to do with common sense.").

But, has the prosecution in these cases before me failed to prove an essential ingredient of the charge against each of the remaining two appellants? I think not. In my view, the submission of counsel for the appellants is specious. It has nothing to do with an essential ingredient of a charge, which is here, the driving of a motor vehicle but with a failure to pinpoint a specified car to a specified accused. The prosecution has adduced *prima facie* evidence proving that the second appellant drove either motor car SE 8498T or EG 4031M on a charge of driving the former, and likewise in respect of the third appellant, on a charge of driving the latter. To acquit the second appellant and third appellant on the ground put forward by their counsel would lead to the conclusion that, as far as the law is concerned, neither the appellant was driving either of the two cars. This, in my view, is not only an absurdity in fact but also an absurdity in law.

In my view, the answer to the poser created by the prosecution having proved that the second appellant and the third appellant drove one or other of two cars *viz.* SE 8498T and EG 4031M but without being able to say who drove which, is that both the said appellants have been properly convicted of the offences as charged on the ground either:

(a) that the means of identification was mere surplusage, the prosecution having otherwise proved the existence of the motor vehicles driven by them at the time and place as charged, or

(b) there was an error in each charge in respect of the means of identification of the car because if the second appellant did not drive motor car SE 8498T, then he drove motor car EG 4031M and the conclusion is likewise applicable to the third appellant.

An error of this nature comes within the purview of section 161 of the Criminal Procedure Code. The question that remains to be determined is whether such an error has misled the second and third appellants. In my view, neither appellant was misled by the error as both of them were aware they had driven the cars identified by PW2. They took a deliberate stand in refusing to enter a defence on what they believed or were advised to be a substantive defect in the case for the prosecution. I do not think that the omission to link each appellant to each of the cars as charged, in circumstances where both the appellants and the cars have been identified as having engaged in a race among themselves on the highway, is a substantive defect at all. In my view, illustration (d) to section 161 of the Criminal Procedure Code is apt.

Even if I were wrong in the above conclusions, I am of the view that section 395 of the Criminal Procedure Code applies to these three cases. The failure to pinpoint the motor cars to the appellants was, at the highest, an irregularity which has not and could not have occasioned any failure of justice. If I were to accept the submission of counsel for the appellants, I would be flying in the face of reality (that such appellant drove one or other of the two cars) and logic (that if each appellant did not drive one of the two cars, he must have driven the other car). That would be a travesty of justice. The appeals are therefore dismissed.

Appeals dismissed.

Solicitors: *Leo Fernando.*

HANG LUNG BANK LTD. v. DATUK TAN KIM CHUA

[A.C.J. (Lai Kew Chai J.) October 31, 1986]

[Singapore – Suit No. 3672 of 1984]

Conflict of Laws – Proper law of debt – Whether Hong Kong law or Macau law.

Contract – Assignability of debt – Proper law of debt.

Civil Procedure – Summary judgment – Application for – Whether defence has merits – Conflict of laws issue.

In September 1981, the defendant borrowed HK$20 million from Banco Do Pacifico S.A.R.L. of Macau ("Pacific Bank Ltd."). In November 1983, when the loan